



FACSIMILE MESSAGE  
BUREAU OF INDIAN AFFAIRS  
1001 Indian School Road  
Albuquerque, NM 87104

Telephone: (505)563-3804  
Telefax: (505)563-3094

Date: 9/24/06		Number of Pages: 5 (Including Cover Sheet)	
Please Deliver to: RACHEL H SELMAAS		Fax #: 505-281-8027	
From: JOSEPH LITTLE			
FYI			
<p>This fax is intended only for the addressee shown above. It may concern information that is privileged, confidential, or otherwise protected from disclosure. If the reader of this message is not an addressee or agent of the addressee, you have received this document in error. Please call (505) 563-3804.</p>			

- Peace Officers in General, 29-1-1 to 29-1-16.
- State Police, 29-2-1 to 29-2-29.
- Identification of Criminals, 29-3-1 to 29-3-10.
- Sex Offender Registration and Notification, 29-11A-1 to 29-11A-10.
- AMBER Alert, 29-15A-1 to 29-15A-5.
- DNA Identification, 29-16-1 to 29-16-13.
- Criminal Records Screening for Caregivers, 29-17-1 to 29-17-5.
- Concealed Handgun Carry, 29-19-1 to 29-19-14.

## ARTICLE 1

### Peace Officers in General

- 29-1-9. Appointment of peace officers; citizenship certificate of appointment; exceptions.
- 29-1-11. Authorization of tribal and pueblo police officers and certain federal officers to act as New Mexico peace officers; author-

Sec.

ity and procedure for commissioned peace officers.

- 29-1-16. Electronic recordings of custodial interrogations.

#### 29-1-9. Appointment of peace officers; citizenship certificate of appointment; exceptions.

No sheriff of a county, mayor of a city or other person authorized by law to appoint special deputy sheriffs, marshals, policemen or other peace officers in the state of New Mexico to preserve the public peace and to prevent and quell public disturbances shall appoint as such special deputy sheriff, marshal, policeman or other peace officer any person who shall not be a citizen of the United States of America. No person shall assume or exercise the functions, powers, duties and privileges incident and belonging to the office of special deputy sheriff, marshal, policeman or other peace officer without first having received an appointment in writing from a person authorized by law to appoint special deputy sheriffs, marshals, policemen or other peace officers; provided that nothing in this section shall apply to lawfully appointed United States marshals or to deputies of those marshals or to railroad peace officers appointed pursuant to Section 63-2-18 NMSA 1978 in the performance of their duties as peace officers.

This section shall not apply in times of riot or unusual disturbance and when so declared by the public proclamation of the governor of the state.

History: Laws 1891, ch. 60, §§ 1, 2; C.L. 1897, §§ 743, 744; Code 1915, § 1256; C.S. 1929, § 33-4412; 1941 Comp., § 40-109; 1953 Comp., § 39-1-9; 1979, ch. 98, § 1; 2006, ch. 30, § 2.

The 2006 amendment, effective March 2, 2006, deletes references to special constables; requires that

appointed peace officers be citizens of the United States of America; and provides that appointed peace officers be appointed by a person authorized by law to appoint such officers.

#### 29-1-11. Authorization of tribal and pueblo police officers and certain federal officers to act as New Mexico peace officers; authority and procedure for commissioned peace officers.

A. All persons who are duly commissioned officers of the police or sheriff's department of any New Mexico Indian nation, tribe or pueblo or who are law enforcement officers employed by the bureau of Indian affairs and are assigned in New Mexico are, when commissioned

29-1-11

## LAW ENFORCEMENT

29-1-11

under Subsection B of this section, recognized and authorized to act as New Mexico peace officers. These officers have all the powers of New Mexico peace officers to enforce state laws in New Mexico, including the power to make arrests for violation of state laws.

B. The chief of the New Mexico state police is granted authority to issue commissions as New Mexico peace officers to members of the police or sheriff's department of any New Mexico Indian nation, tribe or pueblo or a law enforcement officer employed by the bureau of Indian affairs to implement the provisions of this section. The procedures to be followed in the issuance and revocation of commissions and the respective rights and responsibilities of the departments shall be set forth in a written agreement to be executed between the chief of the New Mexico state police and the Indian nation, tribe or pueblo or the appropriate federal official.

C. The agreement referred to in Subsection B of this section shall contain the following conditions:

(1) the Indian nation, tribe or pueblo, but not the bureau of Indian affairs, shall submit proof of adequate public liability and property damage insurance for vehicles operated by the peace officers and police professional liability insurance from a company licensed to sell insurance in the state;

(2) each applicant for a commission shall successfully complete four hundred hours of basic police training that is approved by the director of the New Mexico law enforcement academy;

(3) the chief of the New Mexico state police shall have the authority to suspend any commission granted pursuant to Subsection B of this section for reasons solely within the chief's discretion;

(4) if any provision of the agreement is violated by the Indian nation, tribe or pueblo or any of its agents, the chief of the New Mexico state police shall suspend the agreement on five days' notice, which suspension shall last until the chief is satisfied that the violation has been corrected and will not recur;

(5) the goldenrod-colored officer's second copy of any citation issued pursuant to a commission authorized by this section shall be submitted within five days to the chief of the New Mexico state police;

(6) any citation issued pursuant to a commission authorized by this section shall be to a magistrate court of New Mexico; except that any citations issued to Indians within the exterior boundaries of an Indian reservation shall be cited into tribal court;

(7) the agreement or any commission issued pursuant to it shall not confer any authority on a tribal court or other tribal authority that the court or authority would not otherwise have;

(8) the authority conferred by any agreement entered into pursuant to the provisions of this section shall be coextensive with the exterior boundaries of the reservation; except that an officer commissioned under this section may proceed in hot pursuit of an offender beyond the exterior boundaries of the reservation, and the authority conferred in any written agreement between the chief of the New Mexico state police and the Navajo Nation may extend beyond the exterior boundaries of the Navajo reservation to and including the area enclosed by the following description:

Beginning at a point where the southern boundary line of the Navajo Nation reservation intersects the western right-of-way line of US 491, and running thence; southerly along the western right-of-way line of US 491 to the northerly city limits of Gallup; thence, easterly along the northerly city limits of Gallup to the northern side of the right of way of I-40; thence, in an easterly direction along the northerly side of the right of way of I-40 to the northerly limits of the village of Prewitt; thence, in a straight line between the northerly boundary of the village of Prewitt to the southerly boundary of Ambrosia Lake; thence in a straight line between the southerly boundary of Ambrosia Lake to the southerly boundary of Hospah; thence, east along a straight line from the southerly boundary of Hospah to the southern boundary of Torreon; thence along the easterly side of the right of way of state road 197 to the westerly city limits of Cuba; thence, north along the westerly side of the right of way of state road 44 to the southerly boundary of the Jicarilla Apache Nation

29-1-11

2006 SUPPLEMENT

29-1-11

reservation; thence, westerly along the southerly boundary of the Jicarilla Apache Nation reservation to the southwest corner of that reservation; thence, northerly along the westerly boundary of the Jicarilla Apache Indian reservation to a point where the westerly boundary of the reservation intersects the southerly side of the right of way of state road 44; thence, northerly along the southerly side of the right of way of state road 44 to its intersection with the northerly side of the right of way of Navajo road 3003; thence, along the northerly side of the right of way of Navajo road 3003 to a point where the northerly side of the right of way of Navajo road 3003 intersects the westerly side of the right-of-way line of state road 371; thence, northerly along the west side of the right of way of state road 371 to the southerly side of the right of way of Navajo road 36; thence, westerly along the southerly side of the right of way of Navajo road 36 to the eastern border of the Navajo Nation reservation; thence, along the eastern and southerly borders of the Navajo Nation reservation to the point of beginning.

The municipalities of Cuba and Gallup and the villages of Thoreau and Prewitt are excluded from the grant of authority that may be conferred in any written agreement entered into pursuant to provisions of this section; provided, however, any written agreement may include under such grant of authority the communities of Ambrosia Lake, Hospah, Torreon, Lybrook, Nageezi, Counselors and Blanco Trading Post and those communities commonly known as the Wingate community; the Navajo Nation Blue Water ranch area of the Thoreau community; the Prewitt community, exclusive of the village of Prewitt; the Haystack community; the Desidero community; the Sand Springs community; the Rincon Marquis community; the Charley Jesus Arviso and the Castillo community; and state road 264 beginning at the point where it intersects US 491 and ending where state road 264 intersects the Arizona-New Mexico state line; and

(9) the chief of the New Mexico state police or the chief's designee and the Indian nation, tribe or pueblo or the appropriate federal official shall be required to meet at least quarterly or more frequently at the call of the chief of the New Mexico state police to discuss the status of the agreement and invite other law enforcement or other officials to attend as necessary.

D. Nothing in this section impairs or affects the existing status and sovereignty of an Indian nation, tribe or pueblo as established under the laws of the United States.

E. All persons who are duly commissioned federal law enforcement officers employed by the federal bureau of investigation; drug enforcement administration; bureau of alcohol, tobacco and firearms; United States secret service; United States customs service; immigration and naturalization service; United States marshals service; postal inspection service; United States probation department; and United States pretrial services agency; and other appropriate federal officers whose primary duty is law enforcement related, who are assigned in New Mexico and who are required to be designated by the county sheriff on a case-by-case basis in the county in which they are working, are recognized and authorized to act as New Mexico peace officers and have all the powers of New Mexico peace officers to enforce state laws in New Mexico, including the power to make arrests for violation of state laws. The department of public safety shall maintain a registry that lists the name and affiliated federal agency of every federal law enforcement officer recognized and authorized to act as a New Mexico peace officer pursuant to the provisions of this subsection. This subsection shall not be construed to impose liability upon or to require indemnification by the state for any act performed by a federal law enforcement officer pursuant to this subsection.

F. The provisions of Subsection E of this section regarding designation of federal law enforcement officers by a county sheriff do not apply to federal law enforcement officers who are duly commissioned officers of a police or sheriff's department for an Indian nation, tribe or pueblo in New Mexico or who are federal law enforcement officers employed by the bureau of Indian affairs.

G. Nothing in this section limits, impairs or nullifies the authority of county sheriffs to appoint pursuant to Chapter 4, Article 41 NMSA 1978 duly commissioned state or federally certified officers who are employees of a police or sheriff's department of an Indian nation, tribe or pueblo in New Mexico or who are federal law enforcement officers employed by the

29-1-16

LAW ENFORCEMENT

29-1-16

bureau of Indian affairs as deputy sheriffs authorized to enforce New Mexico criminal and traffic law.

**History:** 1953 Comp., § 39-1-12, enacted by Laws 1972, ch. 8, § 1; 1979, ch. 39, § 1; 1981, ch. 120, § 1; 1983, ch. 275, § 1; 1988, ch. 14, § 3; 1993, ch. 179, § 1; 1995, ch. 186, § 1; 1997, ch. 260, § 1; 2002, ch. 92, § 1; 2005, ch. 290, § 1.

The 2005 amendment, effective June 17, 2005, adds Subsection G to provide that nothing in this section limits, impairs or nullifies the authority of county sheriffs to appoint duly commissioned state or federally certified officers who are employees of a police or sheriff's department of an Indian nation, tribe or pueblo in New Mexico or who are federal law enforcement officers employed by the bureau of Indian affairs as deputy sheriffs authorized to enforce New Mexico criminal and traffic law.

**Inconsistency between written agreements.** — It is inconsistent for the legislature to require a written agreement for the issuance of a cross commission under this section between state law enforcement and Indian tribal police officers and not require a written agreement for mutual aid agreements under 29-8-3 NMSA 1978. *State v. Branham*, 2004-NMCA-131, 136 N.M. 579, 102 P.3d 646.

**Authority of cross-commissioned officer.** — Traffic stop and detention and arrest are not illegal where Navajo Tribal officer acted as a New Mexico peace officer with authority to enforce the Motor Vehicle Code on non-Indian land in the City of Gallup. *State v. Martinez*, 2005-NMCA-052, 137 N.M. 432, 112 P.3d 293, cert. denied, 2005-NMCERT-005, 137 N.M. 552, 113 P.3d 345.

Because Navajo tribal officer claims to have been deputized by the McKinley County sheriff, Subsection C(8) of Section 29-1-11NMSA 1978 does not defeat his claimed authority to act as a cross-commissioned county deputy. *State v. Martinez*, 2005-NMCA-052, 137 N.M. 432, 112 P.3d 293, cert. denied, 2005-NMCERT-005, 137 N.M. 552, 113 P.3d 345.

Where state police officer initially stopped defendant for speeding on Mescalero Reservation, because the officer did not have authority to enforce Mescalero tribal traffic ordinances, defendant's motion to suppress evidence was properly granted. *State v. Branham*, 2004-NMCA-131, 136 N.M. 579, 102 P.3d 646.

## 29-1-16. Electronic recordings of custodial interrogations.

A. A state or local law enforcement officer shall comply when reasonably able to do so with the following procedures when conducting a custodial interrogation:

- (1) the custodial interrogation shall be electronically recorded in its entirety;
- (2) if conducted in a police station, the custodial interrogation shall be electronically recorded by a method that includes audio or visual or both, if available; and
- (3) the electronic recording shall include the advice of constitutional rights required by law.

B. A law enforcement officer shall comply with the provisions of this section unless the law enforcement officer has good cause not to electronically record the entire custodial interrogation and makes a contemporaneous written or electronic record of the reasons for not doing so. Good cause includes:

- (1) the electronic recording equipment was not reasonably available;
- (2) the electronic recording equipment failed and obtaining replacement equipment was not feasible;
- (3) the individual refused to be recorded; or
- (4) the statement was made in a court proceeding or a grand jury proceeding.

C. Statements that are spontaneously volunteered and not the result of custodial interrogation are not subject to the provisions of this section.

D. The provisions of this section shall apply only to custodial interrogations when, at the time of the interrogation, the person is suspected of committing a felony offense.

E. The provisions of this section do not apply to custodial interrogations conducted outside the state of New Mexico.

F. The provisions of this section do not apply to statements used for impeachment purposes.

G. The provisions of this section do not apply within a correctional facility.

H. As used in this section:

- (1) "custodial interrogation" means questioning by law enforcement officers that requires the advice of constitutional rights; and
- (2) "electronic recording" means a complete and authentic electronic recording created by visual or audio media, including by motion picture, videotape, audio tape or digital media.